



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/039,957      | 03/16/1998  | PAUL L. KORNBLITH    | 2509-970451         | 1251             |

7590 01/04/2002

BARBARA E JOHNSON  
WEBB ZIESENHEIM BRUENING LOGSDON  
ORKIN & HANSON 700 KOPPERS BUILDING  
436 SEVENTH AVENUE  
PITTSBURGH, PA 152191818

EXAMINER

GITOMER, RALPH J

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

1623

DATE MAILED: 01/04/2002

32

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
**09/039,957**

Applicant(s)  
**Kornblith**

Examiner  
**Ralph Gitomer**

Art Unit  
**1623**



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Nov 13, 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 37-39 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 37-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☒ Interview Summary (PTO-413) Paper No(s). 25
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 20) ☐ Other:

The RCE request and amendment received 11/13/01 have been entered and claims 37-39 are currently pending in this application. The Terminal Disclaimer also received 11/13/01 has  
5 been accepted. In claim 38 line 2, ~~the~~ the group consisting of ~~the~~ may be intended. A priority date is granted to the filing date of this CIP application, 3/16/98.

10 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

15 (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be  
20 negated by the manner in which the invention was made.

Claims 37-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Dudley in view of Broadley.

25 Dudley (Am J Obstet Gynecol) entitled ~~A~~ Human Endometrial Explant System ~~dated~~ dated December 1992, teaches on page 1774 column 2, mincing into 1 mm(3) fragments and plating samples of endometrium, a hyperproliferative tissue. Then the cultured cells were treated with interleukin-1beta, tumor necrosis factor, or progesterone and studied. On page 1779 column 1, only minor

tissue processing is required without separation of components enabling investigation of relatively intact tissue.

The claims differ from Dudley in that they specify the cells are grown in a monolayer.

5           Broadley (Laryngoscope) entitled ~~✕~~A Tissue Culture Model for the Study of Canine Vocal Fold Fibroblasts~~✕~~ dated January 1995, teaches in the abstract, a tissue culture model where the sample tissue is cut into 1 mm(3) pieces and grown to confluence. Then effects of treatments including transforming growth factor beta  
10           and hydrocortisone are determined.

          It would have been obvious to one of ordinary skill in the art at the time the invention was made to grow the cells into a monolayer in the method of Dudley as taught by Broadley because it would appear that Dudley does grow the cells in a monolayer.  
15           Broadley specifically states the cells are grown to confluence and the same would appear likely in the method of Dudley.

          Further, to employ the agents of Dudley in the method of Broadley would have been obvious because both methods perform essentially the same function with the same method steps and no  
20           novelty is seen in the selection of agents to treat the cultured cells.

          Regarding claim 39 directed to treating with an immunotherapeutic agent, the agents taught by Dudley are immunotherapeutic agents.

Serial No. 09/039,957  
Art Unit 1623

-4-

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ralph Gitomer whose telephone number is (703) 308-0732. The examiner can normally be reached on Tuesday-Friday from 8:00 am - 5:00 pm. The examiner can also be reached on alternate Mondays. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Geist can be reached on (703) 308-1701. The fax phone number for this Art Unit is (703) 308-4556. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1234. For 24 hour access to patent application information 7 days per week, or for filing applications electronically, please visit our website at [www.uspto.gov](http://www.uspto.gov) and click on the button Patent Electronic Business Center for more information.



Ralph Gitomer  
Primary Examiner  
Group 1623

**RALPH GITOMER  
PRIMARY EXAMINER  
GROUP 1200**